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832 Montercy Road

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#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

LOLINA PORTER,	)
Plaintiff,	)
v.	) Case No. 2:10-cv-2858-SHM-dkv
GMAC MORTGAGE, LLC; AURORA LOAN SERVICES, LLC;	) ) )
GENWORTH FINANCIAL; AND	)
DOES,	)
Defendants.	)

### MOTION TO ENFORCE BANKRUPTCY ORDER

Defendant GMAC Mortgage, LLC ("GMACM"), by and through its undersigned counsel, hereby moves the Court to dismiss GMACM as a party with prejudice pursuant to a Bankruptcy Court Order entered on February 11, 2016 (the "Order") in *In re: Residential Capital, LLC, et al.*, in the United States Bankruptcy Court for the Southern District of New York, Case Number 12-12020 (MG). In further support of its Motion, GMACM states as follows:

- 1. On May 14, 2012 (the "Petition Date"), Residential Capital, LLC and certain of its direct and indirect subsidiaries, including GMACM (collectively, the "Debtors"), filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Debtors' Chapter 11 cases (the "Bankruptcy Cases") were jointly administered, indexed at case number 12-12020 (MG).
- 2. On December 11, 2013, the Bankruptcy Court entered its Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the

Official Committee of Unsecured Creditors (the "Confirmation Order") [Bankruptcy Docket 6065]<sup>1</sup> approving the terms of the Chapter 11 plan, as amended (the "Plan"). The effective date under the Plan occurred on December 17, 2013 (the "Effective Date").

- 3. On February 11, 2016, the Bankruptcy Court entered an Order Granting ResCap Liquidating Trust's Omnibus Motion to Enforce Injunctive Provisions of Plan and Confirmation Order, attached hereto as **Exhibit A**, which (i) bars Plaintiff, Lolina Porter from continuing to prosecute monetary claims against GMAC under the injunction provisions of the Plan and Confirmation Order, and (ii) permits the Liquidating Trust to seek sanctions in the event Plaintiff continues in her refusal to dismiss monetary claims with respect to the Debtors.
- 4. GMACM has since transferred servicing of Ms. Porter's loan to Aurora Loan Services, LLC and has no interest in the real property located at 6131 Woodstock View Drive, Millington, TN 38053 that is the subject of this lawsuit. (Compl. at 4-5.)
- 5. Thus, Plaintiff's only claims against GMACM are monetary claims related to GMACM's servicing of the Loan.
- 6. Pursuant to the Order, Plaintiff was required to dismiss her claims against GMACM within fourteen days of entry of the Order.
  - 7. To date, Plaintiff has not dismissed GMACM as a party.

WHEREFORE, based upon the Bankruptcy Court's Order, GMACM respectfully requests that the Court grant this motion and dismiss Ms. Porter's claims against GMACM with prejudice and in their entirety, award GMACM its attorneys' fees in pursuing this Motion, and grant GMACM such other and further relief as is just and appropriate.

<sup>&</sup>lt;sup>1</sup> Due to its voluminous nature, the Confirmation Order, to which the Plan is an exhibit, is not included as an attachment, but a copy of the Confirmation Order and the Plan may be obtained at no charge at http://www.kccllc.net/rescap.

Respectfully submitted,

/s/ Benjamin W. Perry

Benjamin W. Perry (BPR No. 34387)
Heather H. Wright (BPR No. 30649)
1600 Division Street, Suite 700
Nashville, Tennessee 37203
P: (615) 252-3515
F: (615) 252-6364
bperry@bradley.com
hwright@bradley.com
torneys for GMAC Mortgage, LLC

#### **CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2017, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all parties registered to receive electronic notice. Copies of the foregoing were also served upon the following parties via U.S. Mail:

Lolina Porter 832 Monterey Road Glendale, California 91206

/s/ Benjamin W. Perry

Benjamin W. Perry

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UNITED STATES BANKRUPTCY C SOUTHERN DISTRICT OF NEW YO		
	)	
In re:	)	Case No. 12-1202

In re:	) Case No. 12-12020 (	(MG)
RESIDENTIAL CAPITAL, LLC, <u>et</u> <u>al</u> .,	) Chapter 11	,
Debtors.	) Jointly Administered )	I

# ORDER GRANTING RESCAP LIQUIDATING TRUST'S OMNIBUS MOTION TO ENFORCE INJUNCTIVE PROVISIONS OF PLAN AND CONFIRMATION ORDER

Upon the motion (the "Motion")<sup>1</sup> of the ResCap Liquidating Trust (the "Liquidating Trust") established pursuant to the terms of the confirmed Plan filed in the above-referenced Chapter 11 Cases and as successor in interest to the Debtors, pursuant to sections 105(d), 524, and 1141 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 1015(c), 3020(d), and 9007 of the Federal Rules of Bankruptcy Procedure, and Article XII of the Plan, seeking entry of an enforcing the release and injunctive provisions of the Plan and Confirmation Order; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and upon consideration of the Motion and the Declaration of Kathy Priore in Support of the ResCap Liquidating Trust's Omnibus Motion to Enforce Injunctive Provisions of Plan and Confirmation Order annexed to the Motion as Exhibit 2; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Liquidating Trust, the Liquidating

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



Trust's beneficiaries, the Debtors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

#### ORDERED, ADJUDGED, AND DECREED THAT:

- 1. The relief requested in the Motion is granted as provided herein.
- 2. No later than fourteen days after entry of this Order, the Litigation Parties listed on Annex A shall take all appropriate actions to dismiss their monetary claims against the Debtors with prejudice within such time frame.
- 3. If a Litigation Party fails to dismiss its monetary claims against the Debtors within such fourteen-day period, this Court, upon further motion of the Liquidating Trust, may issue an order holding such Litigation Party in contempt of the Court for violating the terms of this Order and the Plan Injunction Provisions by virtue of such Litigation Party's actions against the Debtors in violation of the Plan and Confirmation Order.
- 4. Further, in connection with any contempt proceeding against a Litigation Party, the Liquidating Trust shall be permitted to seek sanctions against such Litigation Party in this Court for reasonable fees and costs incurred by the Liquidating Trust after the date of this Order in connection with this matter.
- 5. The Liquidating Trust is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order, including authorization to file a notice in a form substantially similar to that attached hereto as **Annex B** (the "**Enforcement Order Notice**") in each court before which a Litigation subject to this Order is pending, including a description of this Order and the Liquidating Trust's ability to seek sanctions in the event of noncompliance with this Order.

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Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6.

7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective

and enforceable upon its entry.

All objections to the Motion or the relief requested therein that have not 7.

been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled

on the merits.

Notice of the Motion as provided therein shall be deemed good and 8.

sufficient notice of such motion, and the requirements of the Case Management Procedures

entered on May 23, 2012 [Docket No. 141], the Procedures Order, and the Local Bankruptcy

Rules of this Court are satisfied by such notice.

This Court shall retain jurisdiction to hear and determine all matters 9.

arising from or related to this Order.

IT IS SO ORDERED.

Dated: February 11, 2016

New York, New York

/s/Martin Glenn

MARTIN GLENN

United States Bankruptcy Judge

- 3 -

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Annex A

Litigation Parties

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Caseodalo-rog-02368-98418-divied-0211116184	•

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American September 2002 and 100	Lingation Parry	Case Caption	Court	Docket. Number		ire of Monetary instances in the second	1 2 S	È.	Status of Discussions
-VI247/26								Provisions	
_	Olatunji Alabi	Alabi v.	U.S. Court of	12-1270	Olatunji Alabi	Violations of the Hillinois	0/2/2015	The party did	responded to the letters
		Homecomings Financial	Appeal-/m District		Avenue			proof of claim.	sent by the Liquidating
		Network, et al.			Apt. 15-M				Trust pursuant to the
-				7	Chicago, IL 60616		2.000	F	Procedures Order.
	Leland	Neyer v.	U.S. Court of	11-15722	Leland Anthony Neyer	Violations of RESPA,	6/2/2015	The party's	Ine party has not responded to the letters
	Anthony	Homecomings	Appear-9m		and June E. Incycl	Mail Fraud. Wire Fraud.	6107/61/11	were expunged	sent by the Liquidating
	June E. Never	LLC, et al.	TIPON I		Alturas, CA 96101	HOEPA, Fair Credit		by Court order	Trust pursuant to the
,						Billing Act, FTCA		[Docket Nos. 6155 and 7096]	Procedures Order.
4	Derrick D.	Peterson v.	U.S. Court of	11-2381	Law Offices of Neil	Common Law Fraud,	6/2/2015	The party did	The party has not
	Peterson	GMAC	Appeal-1st		Kreuzer 268 Newhury Street	Violation of Massachusetts General	C102/61/11	not tile a tillery proof of claim.	sent by the Liquidating
		Mongage LLC	III)		4th Floor	Law Chapter 93A		4	Trust pursuant to the
m		0.1	110 0000	12 55205	Mr. and Mrs. Adele	Negligence Rehabilitation	6/2/2015	The party did	Despite an exchange of
	Jeff and	Schneidereit v.	U.S. Court of	13-55395	Schneidereit	Act. Americans With	11/19/2015	not file a timely	letters with the party, the
	Schneidereit	Scott & Brian	Circuit		580 Dolliver Street	Disability Act, Federal		proof of claim.	Liquidating Trust has been
多					Pismo Beach, CA 93449	Fair Housing Act, Unruh			unable to effectuate a
						Civil Rights Act, Elder			the monetary claims
						Abuse and Dependent Adult Civil Protection Act			asserted against the
4							21.2		Debtors.
	Robert	Sweeting v.	California	G045198	Robert Sweeting	Defamation, Tortious	6/2/2015	The party's proofs of claim	The party has not responded to the letters
	Sweeting	GMAC Mortgage 11 C	Anneal-4th		Unit F81	THEORY WITH COMM	240202121	were expunged	sent by the Liquidating
		Milligage, LLC	Appellate		Huntington Beach, CA			by Court order	Trust pursuant to the
V			District-		92647			[Docket No. 5873].	Procedures Order.
丄	Allan	Diwa, et al. v.	USDC-ED-	2:09-CV-0	Law Offices of Marc T.	Negligence, Breach of	6/30/2015	The party did	The party has not
	Christopher	Standard	California	2005-KJM	Terbeek	Contract, Breach of Fiduciary Duty Infliction	0102/61/11	not the a uniery	sent by the Liquidating
	Diwa and	racine Corp.,			Suite 115	of Emotional Distress,			Trust pursuant to the
	Cristomo	ij ;			Oakland, CA 94601	Fraud, Violation of			Procedures Order.
	Carino					State/Federal Lending			
						Laws, Unian Business Practices, Violation of			
						Racketeer Influenced and			
١						Corrupt Organizations			•
<u> </u>	I ofina Porter	Porter v	USDC-WD-	2:10-cv-	Lolina Porter	Predatory Lending	6/30/2015	The party did	The party has not
		GMAC	Tennessee	02858-	832 Monterey Road		11/19/2015	not file a timely	responded to the letters
		Homecomings   Financial		SHM-dkv	Giendale, CA 91200			proof of claum.	Trust pursuant to the
7		Network, et al.							Procedures Order.

nex B

Enforcen Order Notice

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#### [CAPTION]

#### NOTICE OF BANKRUPTCY COURT ORDER

[Debtor Entity], by and through its undersigned counsel, respectfully submits this Notice of Bankruptcy Court Order, and states as follows:

- 1. On May 14, 2012 (the "Petition Date"), Residential Capital, LLC and certain of its direct and indirect subsidiaries, including [Debtor Entity] (collectively, the "Debtors"), filed voluntary petitions for resounder Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Suthern District of New York (the "Bankruptcy Court"). The Debtors' Chapter 11 cases (the "Bankruptcy Cases") are being jointly administered, indexed at case number 12-12020 (MG).
- 2. On December 11, 2013, the Bankruptcy Court entered its Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors (the "Confirmation Order") [Bankruptcy Docket 6065]<sup>1</sup> approving the terms of the Chapter 11 plan, as amended (the "Plan"). The effective date under the Plan occurred on December 17, 2013 (the "Effective Date").
- 3. On [Date], the Bankruptcy Court entered the attached [Order Granting ResCap Liquidating Trust's Omnibus Motion to Enforce Injunctive Provisions of Plan and Confirmation Order] which (i) bars [Litigation Party] from continuing to prosecute monetary claims against [Debtor Entity] under the injunction provisions of the Plan and Confirmation Order, and (ii) permits the Liquidating Trust to seek sanctions in the event [Litigation Party] continues in its refusal to dismiss monetary claims with respect to the Debtors.

Respectfully submitted this _	day of	, 2016.
103poonary babilition and _		

<sup>&</sup>lt;sup>1</sup> Due to its voluminous nature, the Confirmation Order, to which the Plan is an exhibit, is not included as an attachment, but a copy of the Confirmation Order and the Plan may be obtained at no charge at <a href="http://www.kccllc.net/rescap">http://www.kccllc.net/rescap</a>

## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

LOLINA PORTER,	)
Plaintiff,	)
v.	) Case No. 2:10-cv-2858-SHM-dkv
GMAC MORTGAGE, LLC GENWORTH FINANCIAL, AND DOES,	) ) ) )
Defendants.	,

# ORDER GRANTING MOTION TO ENFORCE BANKRUPTCY ORDER AND DISMISSING GMAC MORTGAGE, LLC WITH PREJUDICE

Before the Court is GMAC Mortgage, LLC's ("GMACM") Motion to Enforce Bankruptcy Order (Docket Entry "D.E." #59). The Court hereby finds that, pursuant to a Bankruptcy Court Order entered on February 11, 2016 (the "Order") in *In re: Residential Capital, LLC, et al.*, in the United States Bankruptcy Court for the Southern District of New York, Case Number 12-12020, Plaintiff Lolina Porter was ordered to dismiss GMACM as a party in this action within 14 days of entry of the Order and has failed to do so.

Accordingly, it is ORDERED that GMACM's Motion to Enforce Bankruptcy Order is GRANTED and Defendant GMACM is DISMISSED WITH PREJUDICE.

It is so ORDERED.

Enter this \_\_\_ day of September, 2017.

/s/ Samuel H. Mays, Jr.
Samuel H. Mays, Jr.
UNITED STATES DISTRICT JUDGE